



1120 Connecticut Avenue, NW  
Washington, DC 20036

1-800-BANKERS  
[www.aba.com](http://www.aba.com)

*World-Class Solutions,  
Leadership & Advocacy  
Since 1875*

*L.H. Wilson  
Senior Counsel  
202-663-5030  
[hwilson@aba.com](mailto:hwilson@aba.com)*

Via Electronic Mail and U.S. Mail

November 16, 2009

Patricia Brumfield Fry, Chair  
Drafting Committee on Revised Uniform Law on Notarial Acts  
4102 Cedar Crest Ln.  
Columbia, MO 65203

Re: "Clean" Draft for November 20-21, 2009 Drafting Committee Meeting

Dear Professor Fry:

Thank you for providing the referenced draft for review and comment. This latest draft reflects several improvements, and we appreciate the diligence and efforts of the Reporter and members of the Drafting Committee in this regard.

By way of background, the American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Our members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.5 trillion in assets and employ over 2 million men and women.

As we have discussed, some time ago ABA formed a Working Group on Uniform Notary Law Revisions to review drafts and provide feedback to the Drafting Committee. Composed of bank lawyers and operations officers with experience in notarization issues and state bankers association attorneys who lobby state legislatures on behalf of their members, the Group represents a good cross section of professionals. Our Group held a conference call meeting last week to discuss the referenced draft. This was the fourth conference call during the drafting process.

You will recall that when NCCUSL was considering initiation of this drafting project, ABA made several points, including the following. First, if properly drafted, a revised law can reduce compliance costs and promote efficiency. Second, it has been ABA's experience that a narrowly-tailored act addressing core issues without imposing unnecessary burdens and expense on industry has a much better chance of uniform enactment. Third, a challenge would be to avoid including provisions that are inherently local in nature or that would detract from uniform enactment in the fifty states.

With respect to the referenced draft, we would appreciate your consideration of the items noted below.

1. Page 12, lines 4-5. Our Group recommends that the language in brackets “{or that the individual executing the record is competent or has the capacity to execute the record}” not be included. The Group reasoned that such issues frequently involve fact-intensive questions and that the main focus of the notary should be on whether the signature on the record is that of the named individual.

2. Page 12, lines 11-13. Our Group strongly prefers this language in lines 11-13, rather than the wording in lines 7-10.

3. Page 29, lines 1-2. Our Group noted that these restrictions on review and inspection of journals prepared by a notary public can be problematic and result in unintended consequences in some cases. Our research found that the California Government Code (Section 8206, updated through the 2008 Statutes) contains the following language:

“A notary public who is an employee shall permit inspection and copying of journal transactions by a duly designated auditor or agent of the notary public's employer, provided that the inspection and copying is done in the presence of the notary public and the transactions are directly associated with the business purposes of the employer. The notary public, upon the request of the employer, shall regularly provide copies of all transactions that are directly associated with the business purposes of the employer, but shall not be required to provide copies of any transaction that is unrelated to the employer's business. Confidentiality and safekeeping of any copies of the journal provided to the employer shall be the responsibility of that employer.”

We strongly urge the Drafting Committee to consider inclusion of similar language in the Revised Act.

4. Page 34, line 30; Page 35, lines 1-8. This language relates to the requirement for a notary to submit a surety bond. If the Drafting Committee concludes that a bond requirement is appropriate, we strongly urge that wording be added allowing the submission of an irrevocable letter of credit as an alternative to the bond. It has been noted that a satisfactory letter of credit is in the nature of a guaranty, and at least one court has held that a letter of credit is the equivalent of a cash deposit [see *Alford's Service, Inc. v. Sinclair Oil Corp.*, 2003 US Dist. LEXIS 22894 (D Minn. 12-17-2003)]. We also note that other NCCUSL acts permit letters of credit to serve as substitutes for surety bonds (e.g., see Section 14 of the Uniform Debt-Management Services Act).

5. Page 36, lines 20-28. This language relates to educational and examination requirements for notaries public. The section is bracketed, thus making its inclusion optional with each state. We recognize that some might view professional education and examination requirements as ways to enhance the effectiveness and integrity of the notarial system. At the same time, the imposition of such requirements will be a significant change in many states. Due to budget or funding issues, these states might understandably be reluctant to initiate new requirements and programs. Indeed, the section might have the unintended effect of being an obstacle to enactment of the Revised Act. In addition, certain language in Section 17 is

bracketed, thus allowing states to fill in the blank as to the hours of instruction required. It is almost inevitable that for even those states that include the section, the educational requirements will differ from state to state. In the case of financial institutions operating in multiple jurisdictions, this will be yet another compliance requirement to follow and satisfy. Our Group asks that the Drafting Committee carefully weigh the burdens and benefits of including Section 17 in the Act. As noted earlier, it has been ABA's experience that a narrowly-tailored act addressing core issues without imposing unnecessary burdens and expense on industry has a much better chance of uniform enactment.

Thank you for the opportunity to comment. We would appreciate your consideration of our views. Please share this letter with other members of the Drafting Committee. ABA anticipates providing additional comments as the drafting process continues. Feel free to contact me if you would like to discuss this matter further.

Sincerely,

A handwritten signature in cursive script, appearing to read "L.H. Wilson".

L.H. Wilson

cc: Arthur R. Gaudio  
John A. Sebert